

1 Hon. Ricardo S. Martinez  
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11 UNITED STATES DISTRICT COURT FOR THE  
12 WESTERN DISTRICT OF WASHINGTON  
13 AT SEATTLE  
14

15 UNITED STATES OF AMERICA,  
16

Plaintiff,

v.

ELDER ROBERTS, JR.,

Defendant.

CASE NO. 2:20-cv-00077-RSM  
Order Granting Default  
Judgment and Decree of  
Foreclosure

17  
18 This matter came before the Court on the United States' Rule 55(b) Motion  
19 for Default Judgment against Defendant Elder Roberts, Jr. (Mr. Roberts). The  
20 Court has reviewed the files and records herein, including the United States'  
21 Motion, and concludes that the United States has established its foreclosure claim  
22 and entitlement to the relief described below.

23 Accordingly, the United States' Rule 55(b) Motion for Default Judgment is  
24 GRANTED. The Court AWARDS the following relief to the United States:

25  
26 1. Judgment *in rem* against the property described below in the amount  
27 owing to the United States under the Promissory Note (Note) [ECF no. 1-1] and

1 Deed of Trust [ECF no. 1-2], which is \$240,133.08 through July 30, 2022, plus  
 2 \$23.79 interest per day thereafter through the date of judgment (the Judgment).  
 3

4       2. The Deed of Trust covers the real property (the Property) commonly  
 5 known as 2915 Martin Road, Bellingham, Washington 98226, and is legally  
 6 described as:

7           That portion of Lot 10 described as the east 132 feet of the  
 8 west 396 feet of the northwest quarter of the northwest  
 9 quarter or the northwest quarter of Section 20, Township 39  
 10 North, Range 4 East, Willamette Meridian, Whatcom County,  
 11 Washington, containing 2.00 acres, more or less, together  
 12 with an easement for ingress and egress, and utilities over,  
 13 under, and across the north 30 feet of the west 264 feet of  
 14 the northwest quarter of the northwest quarter of the  
 15 northwest quarter of Section 20, as set forth in deed on file  
 16 in this office [Bureau of Indian Affairs Land Titles and  
 17 Records Office] under document number 111-109.

18 The Property is further identified as Tract no. 111-3904-Q by the Bureau of Indian  
 19 Affairs. Complaint ¶¶ 4-5, Exh. C thereto [ECF 1-3] (BIA Title Status Report).

20       3. The Deed of Trust [ECF No. 1-2] is a first and prior lien on the  
 21 Property and is hereby foreclosed. The Property is hereby ORDERED to be sold  
 22 pursuant to the provisions of 28 U.S.C. § 2001 et seq., with the proceeds of the  
 23 sale applied first to the costs and expenses of making the sale and second, to the  
 24 payment of the *in rem* Judgment owing to the United States, and any excess  
 25 thereafter disbursed to Mr. Roberts as his interests may appear.

26       4. The United States' recovery shall be limited to the proceeds of the sale  
 27 of the Property.  
 28

1       5. Mr. Roberts's interest in the Property is inferior to the United States'  
2 interest.  
3

4       6. Mr. Roberts, and all persons claiming by, through, or under him, are  
5 forever barred and foreclosed from asserting any right, title, or interest in or to the  
6 Property, except to the extent that Mr. Roberts has the right of redemption.  
7

8       7. The sale shall be conducted in accordance with the law and practice  
9 of this Court.  
10

11       8. The United States Marshal for the Western District of Washington or  
12 his/her representative will be authorized and directed under 28 U.S.C. §§ 2001  
13 and 2002 to offer for public sale and to sell the Property. The United States  
14 Marshal or his/her representative will be authorized free access to the Real  
15 Property and to take all actions necessary to preserve the Real Property, including,  
16 but not limited to, retaining a locksmith or other person to change or install locks  
17 or other security devices on any part of the Real Property, until the deed to the  
18 Real Property is delivered to the purchaser at the foreclosure sale.  
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20       9. The United States or any party to the suit may become a purchaser at  
21 the sale and the United States Marshal shall execute a Marshal's Certificate of  
22 Purchase to the Property in favor of the purchaser, and the purchaser will be let  
23 into possession of the premises upon production of the Marshal's Certificate of  
24 Purchase. In the event the United States, including its agency, the Department of  
25 Housing and Urban Development (HUD), is a successful bidder on the Property, it  
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1 shall have the right to apply its Judgment credits in lieu of cash thereon, and the  
2 United States Marshal is authorized to accept such an arrangement.

3       10. After the 30-day automatic stay of proceedings to enforce a judgment,  
4 the United States may present a motion for order of sale. *See Fed. R. Civ. P. 62(a).*

5       11. That the terms of the Order of Sale shall be as follows:

6           a. The sale of the Property shall be free and clear of the interest of Mr.  
7 Roberts, except to the extent that he has a right of redemption under  
8 Washington Revised Code chapter 6.23 or excess funds under  
9 Washington Revised Code chapter 6.21. The redemption period shall be  
10 12 months.

11           b. The sale shall be subject to 12 U.S.C. § 1715z-13a(h)(2), which  
12 allows sale of the Property only to “an eligible tribal member, the  
13 [Nooksack] [T]ribe, or the [Nooksack Housing Authority].” The sale shall  
14 also be subject to building lines, if established; all laws, ordinances, and  
15 governmental regulations (including building and zoning ordinances)  
16 affecting the Property; and easements and restrictions of record, if any.

17           c. The sale shall be held at the courthouse of the county in which the  
18 Property is located, on the Property’s premises, or at any other place in  
19 accordance with the provisions of 28 U.S.C. §§ 2001 and 2002 and shall  
20 be announced in the Notice of Sale.

21           d. The date and time for the sale shall be announced by the United  
22 States Marshal, or his/her representative, in the Notice of Sale.

1           e. The Notice of Sale shall be published once a week for at least four  
2 consecutive weeks before the sale in at least one newspaper regularly  
3 issued and of general circulation in Whatcom County, and, at the  
4 discretion of the Marshal or his/her representative, by any other notice  
5 deemed appropriate. The notice shall contain a description of the  
6 Property; the time, date, and location of the sale as determined by the  
7 United States Marshal or his/her representative; the minimum bid as  
8 determined by the United States; and the terms and conditions of sale  
9 listed in subparagraphs (g)-(l) below.

10           f. The minimum bid for the Property shall be set by the United States.  
11 If the minimum bid is not met or exceeded, the Marshal or his/her  
12 representative, with concurrence of the United States, may without  
13 further permission of this Court, and under the terms and conditions in  
14 this order of sale, hold a new public sale, if necessary, and reduce the  
15 minimum bid as set by the United States, or sell to the highest bidder.  
16

17           g. The sale of the Property shall be subject to confirmation by this  
18 Court. The Marshal shall file a report of sale with the Court, together  
19 with a proposed order of confirmation of sale and proposed deed, within  
20 thirty (30) days from the date of receipt of the balance of the purchase  
21 price.

22           h. On confirmation of the sale, the Marshal shall execute and deliver a  
23 deed of judicial sale conveying the Property to the purchaser.  
24

i. On confirmation of the sale, all interests in, liens against, or claims to, the Property and appurtenances that are held or asserted by all parties to this action are discharged and extinguished, except to the extent that Mr. Roberts has a right of redemption under Washington Revised Code chapter 6.23.

j. On confirmation of the sale, the recorder of deeds, the Bureau of Indian Affairs (BIA), U.S. Department of the Interior, shall cause transfer of the Property and appurtenances to be reflected upon the BIA's register of title.

k. Any party to this suit may become a purchaser at such sale. The United States may bid as a credit against its Judgment without tender of cash.

l. The sale shall be "as is" without warranty of any kind.

12. Until the Property is sold, Mr. Roberts shall take all reasonable steps necessary to preserve the Property (including all buildings, improvements, fixtures and appurtenances on the Property) in its current condition including, without limitations, maintaining a fire and casualty insurance policy. He shall neither commit waste against the Property nor cause nor permit anyone else to do so. He shall neither do anything that tends to reduce the value or marketability of the Property nor cause nor permit anyone else to do so. He shall not record any instruments, publish any notice, or take any other action (such as running newspaper advertisements or posting signs) that may directly or indirectly tend to

1 | adversely affect the value of the Property or that may tend to deter or discourage  
2 | potential bidders from participating in the public auction, nor cause or permit  
3 | anyone else to do so.  
4 |

5 |       13. All persons occupying the Property shall leave and vacate the Property  
6 | permanently within thirty (30) days of the date of this Order, each taking his or  
7 | her personal property (but leaving all improvements, buildings, fixtures, and  
8 | appurtenances to the Property). If any person fails or refuses to leave and vacate  
9 | the Property by the time specified in this Order, the United States Marshal's Office  
10 | is authorized to take whatever action it deems appropriate to remove such person  
11 | from the premises. Specifically, the United States Marshal (or his/her designee) is  
12 | authorized and directed to take all actions necessary to enter the Property at any  
13 | time of the day or night and evict and eject all unauthorized persons located there,  
14 | including Mr. Roberts, or any other occupants. To accomplish this and to  
15 | otherwise enforce this Order, the United States Marshal (or his/her designee) is  
16 | authorized to enter the Property and any and all structures and vehicles located  
17 | thereon, and to use force as necessary. When the United States Marshal  
18 | concludes that all unauthorized persons have vacated, or been evicted from the  
19 | Property, he/she shall relinquish possession and custody of the Property to the  
20 | United States, or more specifically to HUD, or its designee. No person shall be  
21 | permitted to return to the Property and/or remain thereon without the express  
22 | written authorization by the United States Marshal, HUD, or the United States  
23 | Department of Justice, or their respective representatives and/or designees.  
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1 Unauthorized persons who re-enter the Property during the time this Order is in  
2 effect may be ejected by the United States Marshal without further order of the  
3 Court.  
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5       14. If any person fails or refuses to remove his or her personal property  
6 from the Property by the time specified herein, the personal property remaining on  
7 the Property thereafter is deemed forfeited and abandoned, and the United States  
8 Marshal's Office is authorized to remove it and to dispose of it in any manner it  
9 deems appropriate, including sale, in which case the proceeds of the sale are to be  
10 applied first to the expenses of sale and the balance to be paid into the Court for  
11 further distribution.

12       15. The proceeds from the sale shall be paid to the Clerk of this Court and  
13 applied as far as they shall be sufficient to the following items, in the order  
14 specified:  
15

16           a. To the United States for the costs of the sale, including the costs  
17 and commissions of the United States Marshal and any professional  
18 auctioneer if retained and the costs of preserving, advertising, selling, and  
19 conveying the property incurred by the Government.

20           b. To the United States to be applied to the Judgment plus all interest  
21 and costs due and owing thereon.

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1           c. Any balance remaining after the above payments shall be held by  
2           the Clerk until further order of the Court.  
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5           DATED this 15<sup>th</sup> day of September, 2022.  
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9           RICARDO S. MARTINEZ  
10          UNITED STATES DISTRICT JUDGE  
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14          Presented by:  
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16          s/Kyle A. Forsyth  
17          Kyle A. Forsyth, WSBA # 34609  
18          Assistant United States Attorney  
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